Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1136

KAREN DERBY, P.P.A.
Petitioner

v.

THE CONNECTICUT LIGHT AND POWER COMPANY
Respondent

REPLY BRIEF OF PETITIONER

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JURISDICTION

The respondent's brief under Jurisdiction (p. 1) states "due process of law" but it does not state "and equal protection of the law" (petition pp. 2 and 11b) though children as well as corporations are persons under the XIVth Amendment of the Constitution of the United States.

QUESTION PRESENTED

Respondent's brief under Question Presented states (and plainly out of context and for its argument purpose) "propositions of fact" as "the gravamen" (respondent's brief p. 2) but it does not state the conceded gravamen, its own knowledge of the fact (petition p. 3) and the law that fact, even of negligence, becomes law when so conceded and that it could not charge the petitioner and absolve itself uno flatu of the same charge (by Amendment XIV, "equal protection of the law") with reference to the "obvious danger" (R. p. 7-8, court's memorandum). And see the petition, pp. 4-7.

As to par. 1: Respondent's brief under Statement of the Case states: " . . . allegedly sustained when she fell from an apple tree . . .". The state court in its decision (p. 1). The state court in its decision states the same thing . . . "fell and sustained injuries to her head when a branch broke from an apple tree on land owned by the defendant".

Both thus omit the sine qua non "fell from a DEFECTIVE HEIGHT on the defendant's land, specifically a LARGE DEAD AND ROTTEN BRANCH . . .", both thus affecting the whole case by transmuting DEFECTIVE into NON DEFECTIVE or innocuous height to this defendant-respondent's purpose as above (respondent's brief, supra, p. 1, par. 1) and, the record will show (R. P. 22, par. 81) the admittedly OBVIOUS (R. p. 7, par. 1, last line) fact, permeating the whole of Sec. 342 (a), (b) and (c), comment (b) upon which the

plaintiff's case is based (R. pp. 7, 8 line 3) into the proposition of law (as see Brief and Appendix A of the plaintiff petitioner appended thereto (yellow-covered) at p. 15, last paragraph, last five lines, and p. 43A last two lines, with reference to the transcript of the evidence pp. 1014-1025. (Emphasis supplied).

The record and briefs disclose the extension of that error to all the elements of the plaintiff's case, a wholesale transmutation in violation of "reason" itself, re-instating all the abandoned paragraphs to the purpose, (petition 2b), in violation of its own rules (under the appendix system then in effect, infra) the law (Hennessey v. Hennessey, typically, (petition p. 3b which holds the very opposite about inference) and in violation of this plaintiff's constitutional equal protection rights (petition p. 11b) "fully argued" (as stated in petition 15b-16b) in Brief and Appendix A appended thereto).

In Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine v. Michaux, 73 L. ed. 931, at pages 936-937, this Court states:

> "An attentive examination of record disclosed not only that the finding is without fair support in the evidence, but that the evidence conclusively refutes it . . . What we have said of the evidence demonstrates, as we think, . . . laches . . . As it is apparent that had this view of the question of laches prevailed in the state court the federal right set up by the negro order must have been sustained, and the decree must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.
>
> "Decree reversed".

The transcript and record fairly require being called for, with certiorari, brief on the merits and argument.

Mr. Torrance honestly concedes elsewhere (see petition 15b-16b) as here (see respondent's brief in opposition to petition for writ of certiorari, from which he has withdrawn his name although of course not his appearance) and the record and the evidence and the law (2 Restatement, Torts, Second, Sec. 342) will disclose that the plaintiff has proved not only knowledge, as above, but all her affirmative allegations, and that the defendant has not proved its affirmative allegations, it is respectfully submitted. Further, the evidence and the facts are to be taken in the light most favorable to sustaining the verdict (Gallagher v. Button, 73 Conn, 172, 177, and list of cases down to the present cited with it in Connecticut's Maltbie's Appellate Procedure at page 190, and, op. cit., "the evidence may be considered in the light of the court's memorandum of decision."

In the Treat case (respondent's brief p. 5) the respondent states the court there held that the deprivation of a right of trial by jury in a state court does not deny the parties due process of law under the Federal Constitution, but it, the respondent, does not state but omits the last paragraph of the decision, at p. 675: "If the court errs as a matter of law in so doing, the remedy lies in a review in the appropriate court.", a pattern of false assumption pursued to the end here, it is respectfully submitted, not subscribed to here by Mr. Torrance or in the state court as before pointed out (petition p. 15b, last line, to 16b) an extent of zeal in the briefs the employer doesn't show for himself, or even the respondent for itself, and hence this petition p. 13b. And quite incredibly, the record will so show, by ignoring the correction (last word in the record, R. p. 28, bottom of page) as compare R. p. 14, par. 17 and assignment of errors No. 3, subparagraph (b) with reference to said par. 17 of the finding. So that there is not even an assignment of errors, thereon, and therefore

Mr. Torrance who tried the case and argued it in the appellate court had a brief without an issue, the rest of the paragraphs of his assignment of errors (except pars. 42, 46, 49 and 50 on damages and therefore of no importance) having been abandoned in the brief for the purpose, the record will show.

And see petition p. 4, Post v. Perkins, 87 Conn. 71, 73.

Connecticut was the last of the states having the finding and appendix system referred to by Judge Blumenfeld (petition 11b) in Ralls v. Manson, United States District Court, District of Connecticut, May, 1974, Civil No. 11-205, critically. This system (as of October 1, 1974) of findings in jury cases has now been abandoned, but applies in this case, of course, and the rejection of this system in other jurisdictions also should suggest its shortcomings.

"The adequacy of state procedural bars to the assertion of federal questions is itself a federal question. Douglas v. State of Ala. (1965) 85 S. Ct. 1074, 380 U.S. 415, 13 L ed 934.

The record will disclose further, with reference to additional new matter on page 3 of respondent's Brief in Opposition to Petition for Certiorari, that the Motion for Reargument dated September 3, 1974 (petition p. 8b) was duly filed on September 3, 1974, and not out of time; further, that there is nothing in respondent's said brief to controvert the record and the tolling effect of petition's pp. 8b et seq., further that the state court considered, acted upon and denied it (petition pp. 8b, 14b, 16b) and the federal question including the new matter raised in respondent's said brief concerning the petitioner's constitutional equal protection rights ("certainly as obvious to the defendant" quoting the petition, p. 15b, fifth line from bottom of page 15b).

See also, with reference to this new matter so urged in respondent's brief at p. 4, Milardo v. Branciforte, 108 Conn. 451, at p. 453: "At the most it was an irregularity which counsel for the appellees could waive. Since he made no objection to the filing of the appeal and took no action whatever until nearly three months later, he must, in any event, be held to have waived the irregularity, especially in a proceeding so little favored as a plea in abatement." The importance and substantiality of the instant is readily demonstrated by the substance and importance of the subject and the following in addition to the table of citations in petition opening p. i:

68 YLJ 633 at pp. 648-649, 693-704

24 CBJ (Conn. Bar Journal) 61, 77

United Zinc & Chem. Co. v. Britt, 258
U.S. 268, 66 L ed 615, 36 ALR 28,
now overrulled in accordance with dissenting
opinion of Mr. Justice Day.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Connecticut.

Petitioner,
Karen Derby, p.p.a.
By William B. Hennessy
Her Attorney